

**Joint association letter on a proposal for reciprocal BCP arrangements in the East Asia/Pacific**

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Chair  
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Commissioner  
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Chief Executive  
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Dear Sirs,

Thank you for your continued support for our members and for the activities of the financial services industry.

We would like to highlight one of the key concerns of our members and share our preliminary ideas on a potential resolution with you. We would be grateful if you could consider this issue and let us know your thoughts.

**Background**

1. Over the past 20 years, the financial services industry has operated through many major crises. These crises had a variety of causes which were natural disaster, social unrest or more recently, health related. Examples include:
  - SARS (2002)
  - Swine Flu/New type influenza (2009)
  - East Japan earthquake (2011, Japan)
  - Demonstrations (2019, Hong Kong)
  - COVID-19 (2020)
2. Consequently, crisis management and operational resilience are now top priorities for firms and regulators alike.  
Major central banks now have special cross-jurisdictional arrangements in place to support their role in helping to manage the impact of crises on markets and the economy. For example, bilateral US Dollar currency swap arrangements between major jurisdictions and some Asian central banks. Such pre-agreed arrangements have helped to prevent excessive

turmoil in the markets by assuring predictability, certainty, and transparency.

3. Multi-regulator crisis management committees exist for GSIBs. However, other than information exchange agreements there are few, if any, practical pre-agreed arrangements for the supervision of financial services firms during crises. In dealing with crises, each regulator makes their best efforts to protect their markets and customers by sharing information with other regulators as much as possible. By and large information exchange has proved effective in helping to manage the crises. However, the absence of pre-agreed supervisory frameworks makes it difficult for firms to make plans that ensure operational resilience and continuity, should a major crisis occur.
4. The existence of pre-agreed arrangements (reciprocal waivers) between regulators would enable operational resilience and assist the continuity of critical financial services during a crisis. These waivers would help to avoid disruptions and better place firms to continue to provide seamless services to their customers, the economy, and society at large. It would be particularly helpful in the context of the East Asia and Pacific region where each supervisory framework is relatively on its own, and the potential benefits of cross border inter-operability between different locations in strengthening operational resilience has not previously been considered by regulators, albeit operational resilience in the context of each jurisdiction has been discussed and consulted on in global fora.

#### **Crisis management challenges**

5. There are a wide variety of possible crises. However, the response thereto is similar each time. The priority of firms is to continue to provide services to customers and other stakeholders under all circumstances, by ensuring the operational resilience and continuity of such services as far as possible. This can be achieved, by putting in place a back-up site (near/middle/far), training employees, running drills, etc.
6. Japan's experience during the East Japan Earthquake (e.g. fear of nuclear contamination, disruption of transportation, shortage of electricity) and COVID-19 (e.g. risks of virus contamination, quarantine requirements, etc.), demonstrate that "staff transfer" from another financial center may not be realistic in some circumstances.
7. Where staff transfer is not possible or practical, "work transfer" (remote support by colleagues from another financial center) may be a more realistic solution. However, in considering back-up across jurisdictions ("cross-border BCP"), "work transfer" can often be difficult due to regulatory constraints such as local licensing laws, the scope of permissible businesses, procedures for customer protection, locally required regulatory reporting, in addition to problems of language, technology, etc.

#### **Proposal**

8. To resolve these issues, we suggest agreeing mutual back-up/BCP waivers between 4 major financial centers in the East Asia and Pacific region (i.e. Australia, Hong Kong, Japan, and Singapore) with pre-agreed regulatory approval applicable to banking, securities, and futures businesses respectively. It would be very helpful aiding operational resilience and ensuring the continuity of critical services. For example:
  - If a market participant A (duly licensed in Jurisdiction A, but inoperable stricken by a

crisis/disaster) can rely on its group company B (duly licensed in Jurisdiction B, but not based in Jurisdiction A), they can continue business related to Jurisdiction A, from Jurisdiction B.

- If a market participant C (duly licensed in Jurisdiction C, but inoperable stricken by a crisis/disaster) can virtually/physically relocate its business operations to Jurisdiction D (where they are not licensed), they can continue business related to Jurisdiction C, from Jurisdiction D.
9. We envisage that this could be achieved by granting a “deemed license” from both host and home jurisdiction regulators. It would be granted based on mutual recognition of each other’s regulatory regimes, substituted compliance, or reliance between both jurisdictions. Such “deemed license” could be valid for a predetermined limited time period, triggered by the outbreak (or high likelihood) of a major crisis/disaster.
  10. For example, earlier in 2020, the Japanese FSA consulted on its proposal of a framework where they will temporarily (up to three months) exempt some of the regulatory requirements of financial institution that temporarily relocate themselves to Japan, due to a disaster, etc. That type of proposal could be a first step in pursuing longer term arrangements on mutually agreed back-up/BCP between financial centers. Likewise, MAS issued a Q&A where they allowed a) market participant’s officials who cannot return to Singapore due to COVID-19 can do Singapore-related businesses from outside Singapore and b) officials who cannot leave Singapore can do businesses related to their home country from Singapore. Similarly, the SFC issued Q&A and clarified they will accept a market participant to deploy or make their employees outside Hong Kong to do HK-related businesses.

### **Suggested framework**

11. We hope you will agree that it is in the common interest of firms and regulators alike, supporting a) customer protection b) investor protection, and c) market integrity and stability. No financial center and its stakeholders would want to become an epicenter of another global financial crisis, at the cost of their customers, local or global. With such priorities in mind, we would like to suggest the following framework.
12. It is not easy to conceive likely crises/disasters in advance and prepare for them. Thus, a prescriptive approach could potentially result in constraining a firm from taking appropriate action that was in the best interest of its customers and the markets. Instead, we would like to suggest a set of guiding principles based on the following approach:

#### **Initiation of BCP should be at the discretion of each market participant**

Each participant is best positioned to know their resiliency and back-up capabilities elsewhere in the region. They should be given discretion to initiate BCP.

When a “crisis” is more than obvious to everyone, there is not much question about the initiation. But there might be times when some people see a particular phenomenon as a “crisis” while others do not; this might include site-specific incidents (e.g. damage to offices due to a terrorist attack). As such, too narrow a definition of “crisis” would not be helpful. In fact, it could put constraints on market participants preventing them from making decisions appropriate to the particular circumstances of any crisis.

Even when the “crisis” is obvious, regulators might not be able to call for BCP or emergency procedures in a timely manner for various reasons (e.g. broader public interest considerations, administrative procedures, etc.)

The most effective approach would be for BCP (for example in the form of staff transfer, work transfer, or any other form) to be initiated by each market participant; i.e. prior approval from the home or host regulator is not required. To the extent necessary, firms would explain plans to both regulators in advance, where practical or if not as soon as possible after.

Similarly, “exit” policy should be left to each market participant, rather than imposing a one-size fits all type of definition of exit. Notification protocol of the “initiation” and “exit” to the regulator will need to be worked out in the course of further discussion.

#### Principle-based, rather than rule-based, regulatory relief

Instead of defining types of transactions (e.g. existing or new), customers (e.g. retail or wholesale), products (e.g. plain vanilla or exotic), we would like to suggest a principle-based approach to regulatory relief. Market participants should be prepared and willing to respond to customers’ needs in the aftermath of a crisis/disaster. Of course, they should not take advantage of it and abuse customers and markets. Needless to say, the objective of a “reciprocal waiver” is not to grant or exempt firms from licensing to do business other than what was already duly licensed in each home market by the local regulator; e.g. a participant in Jurisdiction A who only has a banking license can ask for banking-related support from their colleagues in Jurisdiction B, but not securities business-related support.

#### Transparent and verifiable reliance

In practice, regulators will want assurances from financial institutions that would support the efficacy of the proposed arrangement. It might help to build trust between the regulator and a market participant to take a transparent and verifiable approach where a market participant will;

- Explain their plan and thoughts about cross-border BCP to their home regulator (and host regulator) in advance as part of normal interaction with their supervisors.
- (After executing such cross-border BCP), report to their regulator what exactly they have executed.

Using a combination of ex-ante explanation and ex-post reporting, regulators can verify whether the market participant have executed the cross-border BCP in line with its original purpose of customer protection and market stability.

13. In order to introduce a workable framework, it would be necessary to have taxation and visa conditions in place that can efficiently accommodate cross-border BCP operations. The Associations intend to address these issues with the relevant national authorities with the objective that, during the period of active BCP operation, the host jurisdiction should not impose either individual or corporate local taxes on the relevant business and the requirement for a work permit should either be exempted or granted as expeditiously as possible. A resolution by the regulators to implement a mutual back-up/BCP waiver regime of the type we propose would be a positive influence on any decisions that need to be

made in this regard. Moreover, it would be helpful if the regulators were to convey to the relevant authorities their perspective on the risk mitigation benefits of the proposed regime at the appropriate time.

**Next steps**

14. We would appreciate it, if regulators could set up a similar multilateral forum to discuss this issue as well, so that we could discuss and collaborate with each other. We look forward to further dialogue on this issue. In the meantime, we would be pleased to answer your questions and have more in-depth dialogue on this issue.

Sincerely yours,



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